

## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 266

**Citations Affected:** IC 5-10-8-7.7; IC 16-40-3-2; IC 16-40-3-3; IC 27-8-14.1-4; IC 27-13-7-14.5.

**Synopsis:** Bariatric surgery. Specifies that a physician's duty to monitor a bariatric surgery patient for five years applies unless the physician is unable to locate the patient after a reasonable effort. Establishes certain topics that must be discussed with a patient before bariatric surgery. Provides that a report made by a physician to the state department of health of a death, serious side effect, or major complication of a patient who had surgical treatment for the treatment of morbid obesity shall occur two times per year and is confidential. Specifies that statistical reports compiled by the state department from the reported information are subject to public inspection. Requires six months of supervised nonsurgical treatment before health insurance, a state health care plan, or a health maintenance organization must cover surgical treatment for morbid obesity. (Current law requires 18 months of supervised nonsurgical treatment.) **(This conference committee report: (1) removes language that: (A) requires the office of Medicaid policy and planning (OMPP) to report changes to the Medicaid plan to the health finance commission and legislative council and submit certain information to the select joint commission on Medicaid oversight; and (B) allows a managed care organization, upon approval by OMPP, to adopt a plan for the collection of a copayment for services that are provided to a Medicaid recipient in an emergency room; and (2) specifies that the physician's report to the state department of health shall occur before June 30 and before December 31 of each year.)**

**Effective:** July 1, 2006.

## CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

***Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 266 respectfully reports that said two committees have conferred and agreed as follows to wit:***

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning health.
- 3 Delete everything after the enacting clause and insert the following:
- 4 SECTION 1. IC 5-10-8-7.7, AS AMENDED BY P.L.196-2005,
- 5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 6 JULY 1, 2006]: Sec. 7.7. (a) As used in this section, "covered
- 7 individual" means an individual who is covered under a health care plan.
- 8 (b) As used in this section, "health care plan" means:
- 9 (1) a self-insurance program established under section 7(b) of this
- 10 chapter to provide group health coverage; or
- 11 (2) a contract entered into under section 7(c) of this chapter to
- 12 provide health services through a prepaid health care delivery plan.
- 13 (c) As used in this section, "health care provider" means a:
- 14 (1) physician licensed under IC 25-22.5; or
- 15 (2) hospital licensed under IC 16-21;
- 16 that provides health care services for surgical treatment of morbid
- 17 obesity.
- 18 (d) As used in this section, "morbid obesity" means:
- 19 (1) a body mass index of at least thirty-five (35) kilograms per
- 20 meter squared, with comorbidity or coexisting medical conditions
- 21 such as hypertension, cardiopulmonary conditions, sleep apnea, or

1 diabetes; or

2 (2) a body mass index of at least forty (40) kilograms per meter  
3 squared without comorbidity.

4 For purposes of this subsection, body mass index is equal to weight in  
5 kilograms divided by height in meters squared.

6 (e) Except as provided in subsection (f), the state shall provide  
7 coverage for nonexperimental, surgical treatment by a health care  
8 provider of morbid obesity:

9 (1) that has persisted for at least five (5) years; and

10 (2) for which nonsurgical treatment that is supervised by a  
11 physician has been unsuccessful for at least ~~eighteen (18)~~ **six (6)**  
12 consecutive months.

13 (f) The state may not provide coverage for surgical treatment of  
14 morbid obesity for a covered individual who is less than twenty-one  
15 (21) years of age unless two (2) physicians licensed under IC 25-22.5  
16 determine that the surgery is necessary to:

17 (1) save the life of the covered individual; or

18 (2) restore the covered individual's ability to maintain a major life  
19 activity (as defined in IC 4-23-29-6);

20 and each physician documents in the covered individual's medical record  
21 the reason for the physician's determination.

22 SECTION 2. IC 16-40-3-2, AS ADDED BY P.L.196-2005,  
23 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
24 JULY 1, 2006]: Sec. 2. (a) **As used in this section, "major  
25 complication" means a complication from surgical treatment for  
26 morbid obesity that:**

27 **(1) requires an extended hospitalization, additional surgical  
28 treatment, or invasive drug therapy within thirty (30) days of  
29 the original surgical treatment; or**

30 **(2) results in a permanent disability.**

31 **(b) As used in this section, "serious side effect" means a  
32 nutritional deficiency that requires hospitalization or invasive  
33 therapy.**

34 **(c) A physician who is licensed under IC 25-22.5 and who performs  
35 a surgical treatment for the treatment of morbid obesity shall do the  
36 following:**

37 **(1) Before performing surgery, discuss the following with the  
38 patient:**

39 **(A) The requirements to qualify for the surgery.**

40 **(B) The details of the surgery.**

41 **(C) The possible complications from the surgery.**

42 **(D) The side effects from the surgery, including lifestyle  
43 changes and dietary protocols.**

44 ~~(1)~~ **(2) Monitor the patient for five (5) years following the patient's  
45 surgery, unless the physician is unable to locate the patient after  
46 making reasonable efforts. and**

47 ~~(2)~~ **(3) Report before June 30 and before December 31 of each  
48 year:**

49 **(A) to; and**

(B) in a manner prescribed by;  
 the state department any death, ~~or~~ **serious side effect, or major**  
 complication of the patient.  
~~(b) (d) The A report required in subsection (a) by subsection (c)(3)~~  
 must include the following information:  
 (1) The gender of the patient.  
 (2) The name of the physician who performed the surgery.  
 (3) The location where the surgery was performed.  
 (4) Information concerning the death, **serious side effect, or major**  
 complication and the circumstances in which the death, **serious**  
**side effect, or major** complication occurred.  
**(5) The comorbidities, body mass index, and waist**  
**circumference of the patient:**  
**(A) at the time of the surgical treatment; and**  
**(B) thirty (30) days, ninety (90) days, and one (1) year after**  
**surgical treatment.**

**(6) Whether the patient has had previous abdominal surgery.**  
 SECTION 3. IC 16-40-3-3, AS ADDED BY P.L.196-2005,  
 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2006]: Sec. 3. (a) The state department shall collect and  
 maintain the information reported to the state department under section  
 2 of this chapter.

(b) The reports made under ~~section 2(a)(2)~~ **section 2(c)(3)** of this  
 chapter are ~~public records and are confidential. However, the state~~  
~~department may compile statistical reports from information~~  
~~contained in reports made under section 2(c)(3) of this chapter.~~  
**Any statistical report is** subject to public inspection. ~~However, the~~  
~~state department may not release any information contained in the~~  
~~reports that the state department determines may reveal the patient's~~  
~~identity.~~

SECTION 4. IC 27-8-14.1-4, AS AMENDED BY P.L.196-2005,  
 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2006]: Sec. 4. (a) Except as provided in subsection (b), an  
 insurer that issues an accident and sickness insurance policy shall offer  
 coverage for nonexperimental, surgical treatment by a health care  
 provider of morbid obesity:

(1) that has persisted for at least five (5) years; and  
 (2) for which nonsurgical treatment that is supervised by a  
 physician has been unsuccessful for at least ~~eighteen (18)~~ **six (6)**  
 consecutive months.  
 (b) An insurer that issues an accident and sickness insurance policy  
 may not provide coverage for a surgical treatment of morbid obesity for  
 an insured who is less than twenty-one (21) years of age unless two (2)  
 physicians licensed under IC 25-22.5 determine that the surgery is  
 necessary to:  
 (1) save the life of the insured; or  
 (2) restore the insured's ability to maintain a major life activity (as  
 defined in IC 4-23-29-6);  
 and each physician documents in the insured's medical record the reason

1 for the physician's determination.

2 SECTION 5. IC 27-13-7-14.5, AS AMENDED BY P.L.196-2005,  
3 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2006]: Sec. 14.5. (a) As used in this section, "health care  
5 provider" means a:

6 (1) physician licensed under IC 25-22.5; or

7 (2) hospital licensed under IC 16-21;

8 that provides health care services for surgical treatment of morbid  
9 obesity.

10 (b) As used in this section, "morbid obesity" means:

11 (1) a body mass index of at least thirty-five (35) kilograms per  
12 meter squared with comorbidity or coexisting medical conditions  
13 such as hypertension, cardiopulmonary conditions, sleep apnea, or  
14 diabetes; or

15 (2) a body mass index of at least forty (40) kilograms per meter  
16 squared without comorbidity.

17 For purposes of this subsection, body mass index equals weight in  
18 kilograms divided by height in meters squared.

19 (c) Except as provided in subsection (d), a health maintenance  
20 organization that provides coverage for basic health care services under  
21 a group contract shall offer coverage for nonexperimental, surgical  
22 treatment by a health care provider of morbid obesity:

23 (1) that has persisted for at least five (5) years; and

24 (2) for which nonsurgical treatment that is supervised by a  
25 physician has been unsuccessful for at least ~~eighteen (18)~~ **six (6)**  
26 consecutive months.

27 (d) A health maintenance organization that provides coverage for  
28 basic health care services may not provide coverage for surgical  
29 treatment of morbid obesity for an enrollee who is less than twenty-one  
30 (21) years of age unless two (2) physicians licensed under IC 25-22.5  
31 determine that the surgery is necessary to:

32 (1) save the life of the enrollee; or

33 (2) restore the enrollee's ability to maintain a major life activity (as  
34 defined in IC 4-23-29-6);

35 and each physician documents in the enrollee's medical record the  
36 reason for the physician's determination

(Reference is to ESB 266 as reprinted March 1, 2006.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 266**

**S**igned by:

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Senator Miller  
Chairperson

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Representative Lehe

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Senator Sipes

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Representative Brown C

**Senate Conferees**

**House Conferees**